

110.
M. Green - cr-Ex.

THE COURT: ...and you and Tami, I am sure,
will want to discuss it, not all, even between
the two of you.

A. You know - you know, Your Honour, we
don't.

THE COURT: Okay, carry it on then. Thank
you for your attendance. You are free to go.

MS. EBERHARD: That is the Crown's case, Your
Honour.

THE COURT: Thank you. First witness for the
defence. I would make a run for it if I were
you.

MARY LOUISE GREEN: You know, thank you.

THE COURT: First witness for the defence.

ANDREA ARMSTRONG: Okay, just let me get
organized, Your Honour. Um, I think I'll call
Chelsea Voteary, my daughter.

THE COURT: Chelsea - what is the last name?

ANDREA ARMSTRONG: Voteary, V-O-T-E-A-R-Y.

...PAGING CHELSEA VOTEARY.

ANDREA ARMSTRONG: She's only 12. She's very
nervous.

THE COURT: I will do this. Would you step
up here, please, Ms. Voteary?

CHELSEA VOTEARY: May I, please, sit down?

THE COURT: Not yet, but soon. Your full
name?

CHELSEA VOTEARY: Uh, Chelsea Joyce Voteary.

THE COURT: What is your date of birth,
Chelsea?

Defense Witness 1 Testimony: *Chelsea V - child witness*

CHELSEA VOTEARY: October 8th, 1996.

THE COURT: So that makes you 12 going on 13.
What grade are you in at school?

CHELSEA VOTEARY: Grade seven.

THE COURT: Grade seven. So there is no
question that you know the difference between
telling the truth and telling lies, right?

CHELSEA VOTEARY: I know.

THE COURT: Right. What school do you
attend?

CHELSEA VOTEARY: Um, Silver Pines in
Thornhill.

THE COURT: Okay. And tell me do you - do
you and your family go to church or anything
like that?

CHELSEA VOTEARY: Um, sometimes, on
holidays...

THE COURT: I see.

CHELSEA VOTEARY: ...and stuff.

THE COURT: Does it mean anything to you to
swear an oath on the Bible or would you rather
simply affirm and promise to tell the truth?

CHELSEA VOTEARY: Um, I'd rather swear and
tell....

THE COURT: Would you?

CHELSEA VOTEARY: Yes.

THE COURT: You would rather swear on the
Bible or to affirm?

CHELSEA VOTEARY: Affirm, please.

THE COURT: Affirm. Obviously, she is
capable of giving evidence. Raise your right
hand.

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CHELSEA JOYCE VOTEARY: AFFIRMED

THE COURT: Thank you. Spell your name in full for the reporter here, please. Spell Chelsea, first of all.

CHELSEA VOTEARY: Uh, C-H-E-L-S-E-A.

THE COURT: And Voteary.

CHELSEA VOTEARY: V-O-T-E-A-R-Y.

THE COURT: I will bet you have to spell that a lot.

ANDREA ARMSTRONG: That is why I stick...

THE COURT: Okay.

ANDREA ARMSTRONG: ...with my old married name.

THE COURT: All right. Now, you can take a seat. At any point, you decide you want to stand up to give your evidence, you are allowed to change your mind, okay? Proceed.

ANDREA ARMSTRONG: Okay.

EXAMINATION IN-CHIEF BY ANDREA ARMSTRONG:

Q. When was the first time that you met Rachel Carkner?

A. I met Rachel Carkner at Ava Storey's funeral.

Q. And when was the next occasion that you saw her when she babysat?

A. I saw her on Boxing Day.

Q. And where was I going when - that I needed a babysitter?

A. You were going to Toronto to....

Q. With who?

A. With Cam Armstrong to visit friends.

Q. Okay. What happened the next morning with the cell phone charger?

A. Um, I saw Rachel wrapping up my phone charger and then, um, um, her boyfriend picked her up in his van and I noticed that she had taken my phone charger so, um, I told my mom and then, um, we kept text messaging and....

Q. Wait. I'm not getting that far. Slow down. Thank you. Now, I've lost my train of thought. Um, back to the babysitting, did she ever babysit again after that?

A. No.

Q. Who was around the house for the whole month of January?

A. Cam....

Q. ...that knew that nobody else had babysat?

A. Cameron Armstrong.

Q. Okay. Um, where do I usually go that I need a babysitter?

A. Usually the doctors in Toronto.

Q. Um, how about in the evening when I go out?

A. Um, usually, um, on Wednesday nights, you'd go to, um, a...group to do meditation.

Q. And you have been doing the babysitting for me so I don't have to have a babysitter in my house. Is that right?

A. Yes.

Q. Thank you. Why did Rachel need to borrow the cell phone charger in the first place?

A. Um, she had to borrow it in the first place because, um, she hadn't charged it in awhile so she

like charged it at our house. Then later on, she took it and
+ yeah.

Q. At the warming room, can you explain -
actually, back to the text messages. How many times would
5 you estimate that we text messaged Rachel requesting the cell
phone charger?

A. Per day or....

Q. No, like I mean over six weeks or the
seven weeks that we were tryin' to get it back.

10 A. Wow. Um,....

Q. More than 10? More than 20? More than a
hundred?

A. Hundreds.

Q. I don't think it was - sorry. Anyway,
okay. What kind of excuses was she giving us not to return
15 the charger?

A. Um, some of the excuses were she was not
in town. Um, another excuse was she was with her mother in
the hospital and other excuses like she wasn't around or she
didn't have time...

20 Q. And...

A. ...to drop it off.

Q. ...on January 17th, when I offered to come
and pick up the phone charger and offered her a pair of
slippers because she was, apparently, in the hospital in
25 Toronto, what happened in regards to that? Do you remember?

A. Um,....

Q. Did we ever go see her at the hospital?

A. We didn't see her 'cause she said she was
back in Peterborough.

30 Q. Right, after saying that she was supposed
to be getting what done at the hospital?

A. Um, a cancerous tumour removed.

Q. Yes. Um, how much did you harass me over
getting the cell phone charger back?

A. I harassed you day and night 'cause my
5 phone was like dying. Like 24, 7. Like every day. You
charge it 'cause it dies.

Q. Okay. When you went to the warming room,
what happened when we went downstairs?

A. What happened was you - okay, Rachel was
10 sitting on the computer on Facebook and, um, you stood near
the door. You walked a few steps in. You said, "Nice
hospital that you're in," because she'd kept on saying she
was in the hospital and then, um, you asked for the cell
phone charger back, please, and she just kept ignoring you
and saying she didn't have it and kept on typing on the
15 computer and then, um, you went around. You reached down....

Q. I went around what?

A. You went around the chair...

Q. Yes.

A. ...and, um, you bent down and you tried to
20 see like if the - if it was in there and Rachel, um, like hip
checked you away from it and you screamed like this and like
the way like, I guess, you were on medications and you have
really bad spinal arthritis and things like that. Um, I
thought you were really hurt so, after that, um, Rachel
25 pulled out, um, some hospital bracelets saying she was in the
hospital and, um, after that, um,....

Q. Okay, wait, I'll do - go somewhere else.
Where - where were you standing when Rachel's body contacted
with my body?

30 A. I was standing with my sister further
back.

Q. About how many feet? About as tall as you? About as tall as your sister?

A. Probably about as tall as me. Like I...

Q. Just sense....

A. ...wanted to stay away 'cause I didn't know what was gonna' happen.

Q. Yeah. Okay. Did - was anything in your way? Was there any - anything in your way that made it difficult for you to see what was going on?

A. Nothing.

Q. Um, at any point, did you see me with a wallet or a cell phone charger in my hand?

A. Nothing.

Q. At any point, did you see me shove, hit Rachel?

A. I saw nothing of that.

Q. How did Rachel - it's so hard to say it to a kid in the right words. Sorry, I'm thinkin' hard here. Um, okay. Um, when you went to the police station, what did you speak to the police about?

A. Um, I spoke to the police about my cell phone charger being stolen by Rachel Carkner.

Q. And how long do you think we were there for about?

A. Um, a few hours, maybe, one or two.

Q. How was I behaving after the little scuffle between Rachel and I and the bag?

A. Um, you, um, like not yelled but you told everybody that, um, "Rachel had taken a cell phone charger from my 12 year old daughter," and then, yeah, that's, basically....

Q. Was I talking to Rachel or was I talking

to a whole group of people that were in the building?

A. You were talking to a whole group of people who were in the building.

Q. Was I threatening Rachel? Was I even facing Rachel at the time?

A. You weren't threatening or facing her.

Q. At what point did I call the police?

A. Um, after Rachel had gone into the washroom and you called them, I think you went outside to call them so - and then, um, I think one of the workers from the warming room went in after Rachel to see if she was okay.

Q. Okay. And then when they were coming out, where did they - where did Rachel go when she came out of the woman's washroom?

A. When she came out of the woman's washroom, she went into the enclosed area for a few minutes and started doing something.

Q. The office area?

A. Yeah, the office area and started, um, I don't know, text messaging or calling someone and....

Q. Was Rachel crying?

A. Um, no.

Q. Or how was she behaving? Sorry.

A. She was giggling and laughing with this other worker and then after that, they went into the men's washroom and then they came out and went back to the office area.

Q. And why did we leave...

A. Because....

Q. ...when - when you and I left - when like we left, where did we go?

A. We went, um, right to the police station.

Q. Okay. Um, we left the police station,
what did we do?

A. Um, we went to the warming room but we
didn't - we just like drove past and there was someone - I
think it was a volunteer, um, and he was, um, doing recycling
and you told him that if anyone found a cell phone charger
that, um, you would, um, give them a \$20.00 reward.

Q. And then what did we do after that?

A. Um, I think - well, we went right back
home. Uh, I think it was pretty late.

Q. Did we drive around the block a few times
or any...

A. No, we didn't drive...

Q. ...number of times...

A. ...around the block.

Q. ...at all? Okay. Uh, the next night when
we went back to the police station, why did we think we were
going to the police station that made me bring you guys with
me?

A. I thought I was gonna' get my cell phone
charger back.

Q. And did Mom act, in any way, that she was
stressed because she thought she was gonna' be arrested for
something that day?

A. No.

Q. Is Mom being arrested a little bit unusual
for you in your life?

A. Yeah.

Q. Is Mom being assaulted and not being able
to defend herself a usual...

THE COURT: Well,...

ANDREA ARMSTRONG: Q. ...thing in your life?

THE COURT: ...there is no evidence before
the court that you were assaulted.

ANDREA ARMSTRONG: Okay. Q. What are the
types of things that you need to help me with at home because
5 of my disabilities that I'm on ODSP for?

A. Uh, I have to do, um, dishes most of the
time 'cause her back starts hurting after like five minutes
of doing dishes, um, vacuum, um, clean the washroom, clean my
room, um,....

10 Q. What types of things that Mom has to ask
you about just in daily things because I can't do them and I
need your help?

A. Maybe, go get something from our van or,
um, groceries.

15 Q. Do I have trouble opening certain things?

A. She has trouble, um, opening like cans and
pickle jars and those kinda' things.

Q. Um, what type of activities have I been
avoiding to do with your girls because I don't like to
increase my pain level?

20 A. You do not - well, you haven't been able
to go to Wonderland yet because it's too much, um, walking
around and you don't have enough money to get us there
because that's what ya' need to go around Wonderland 'cause
it's so big and like going to water parks and just, in
25 general, walking around and looking at things.

Q. How did you feel when the police believed
Rachel over you over the theft incident with the cell phone
charger?

30 THE COURT: How she feels about this is not
of any consequence at all.

ANDREA ARMSTRONG: Well, she was victimized

by it.

THE COURT: Cut it out.

ANDREA ARMSTRONG: Sorry. Q. Do you ever
remember making any plans with Rachel to have a cell phone
5 charger dropped off in somebody's mailbox?

A. None at all.

Q. How often do you check the mail for me?

A. Every day.

Q. Did Rachel babysit for us - for you and
10 Ashlyn around the 15th or 16th of January or the 14th of
January?

A. Uh, no.

Q. When was the last time you saw Rachel
until February 10th?

A. Last time I saw Rachel was the last time
15 she babysat me which was on Boxing Day.

Q. At what point was I acting aggressively or
for how long was I acting aggressively while I was at the
warming room like yelling and screaming?

A. You weren't really yelling and screaming.
20 You were just raising your voice and it was like - just for
that one time, you were telling people that Rachel had stolen
something from me.

Q. And did I say anything else to people
after that - any threatening or....

A. No, you said nothing.

Q. Have you ever seen me threaten anybody
physically?

A. No, no one.

ANDREA ARMSTRONG: I don't know if I can ask
30 this question so stop me if you can. Q. What
did you tell Children's Aid when you told them - when they

asked you about being spanked for discipline?

THE COURT: There is no relevance to that question.

ANDREA ARMSTRONG: Okay.

THE COURT: No one has suggested that you spanked any of the kids.

ANDREA ARMSTRONG: No, it's....

THE COURT: Nobody has suggested that at all so there is no need to try to defend yourself...

ANDREA ARMSTRONG: I....

THE COURT: ...on that point.

ANDREA ARMSTRONG: I don't have the strength to hit them. That's what the issue is.

THE COURT: Ask...

ANDREA ARMSTRONG: It hurts...

THE COURT: ...the next question.

ANDREA ARMSTRONG: ...me more than them. Q.

Um, do you remember what made Rachel wanna' bring out her hospital bracelets to show everybody?

A. Uh, probably to make her, um, - don't know how to word it. Um, probably to, maybe, prove that she was in the hospital or to, um,....

Q. But what did I do to make her wanna' do that? What did I say or do?

A. Um, you said - like when you walked in, you said, "Nice hospital you're in," so, maybe, that made her wanna'....

Q. And did she look scared or frightened at that point when she was calmly...

A. No.

Q. ...taking out these out of her wallet?

Okay. What do you believe assault means?

THE COURT: Oh, it does not matter what she believes. It is a matter of law.

ANDREA ARMSTRONG: Okay. Q. What did you

ask me to do that I called Constable Hatton about but he refused to do it after I was arrested?

A. Um, he refused to listen to something else I had to tell him.

Q. Yeah. What - what was it a statement about?

A. Can you rephrase that? Like....

Q. Sorry?

A. Can you rephrase it again?

Q. Um, no, I'm gettin' too tired. Sorry, my medications running out and I'm in too much pain now.

THE COURT: I am sorry, I cannot hear you.

ANDREA ARMSTRONG: My medications running out and I'm in so much pain I can't even think now. Um, okay, I guess, that'll be it for her for now. I might recall her though.

THE COURT: All right. Has the Crown any cross-examination?

MS. EBERHARD: I just have a couple of questions.

THE COURT: All right. Briefly, you will notice I had permitted the defendant to remain seated for her own comfort in this situation. That is unusual and I thought it was best that she be comfortable so that her daughter would be comfortable, as well.

MS. EBERHARD: That's fine.

THE COURT: Carry on.

MS. EBERHARD: Thank you.

CROSS-EXAMINATION BY MS. EBERHARD:

Q. Chelsea, can you tell us about your phone
5 charger, what it looks like.

A. Um, my phone charger is black and it
wasn't square. It had like a little bit of a round onto it
so it was like a triangle almost - it had like a little
smooth round on the top and it said Samsung on it.

10 Q. And it came with the - the phone that you
got?

A. Yes, it did.

Q. All right. And is there anything special
about that phone charger that, say, I would notice or you
would notice?

15 A. Probably not but, um, sometimes, um, I -
there's this one part in my room that I couldn't get to and I
usually pulled it out and it kind of usually bent the thing
just a little bit though so....

20 Q. Any - anything physical about it that I
would - that anyone....

A. Probably not.

Q. Okay. So it might look - if I had the
same phone as you, it might look like my phone charger,
right?

25 A. Yes.

Q. Okay. Do you know what a serial number
is?

A. Yes.

Q. Did - do you have the serial number for
30 that phone charger?

A. Um, no.

Q. Did you see your mom reach into Rachel
Carkner's bag at the - at the warming room?

A. Um, I saw her reach in but Rachel pushed
her outta' the way and she couldn't get anything out of the
5 bag.

Q. Okay. And you went to the police station
about the - about your phone charger. Is that right? That -
that night after the warming room incident, you went to...

A. Yes.

10 Q. ...the police station? Okay. Had you gone
to the police station about the phone charger after - like
before that...

A. Um,....

Q. ...or was that your first time at - at the
15 police station?

A. It was the first time at the police
station for the phone charger.

Q. Okay. I have no further questions.

THE COURT: Thank you. Any other questions
arising out of that? That covers it?

20 ANDREA ARMSTRONG: Not that I can think of...

THE COURT: All right. Now,....

ANDREA ARMSTRONG: ...but she'll be here
waitin' for me, anyway, so I might need to
recall her.

25 THE COURT: She can wait outside the court.

ANDREA ARMSTRONG: She's honestly got a
better memory than most of us of the...

THE COURT: Have you got...

ANDREA ARMSTRONG: ...whole thing so....

30 THE COURT: ...another witness that you wish
to call at this time or...

ANDREA ARMSTRONG: Yeah, my ex-husband's out there.

THE COURT: ...would you prefer to take the afternoon recess so that you can, perhaps, take more of your medication or whatever you need? Do you want to do it now?

ANDREA ARMSTRONG: Yes, please.

THE COURT: We will take 15 minutes. Thank you. No discussion with any other witnesses, okay?

CHELSEA VOTEARY: Okay.

THE COURT: Thank you.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Thank you. Who is your next witness?

ANDREA ARMSTRONG: Cameron Armstrong out in the hallway.

THE COURT: And, again, you may remain seated while questioning your witnesses.

ANDREA ARMSTRONG: There's one thing. The lady from Telus is still here. I'm not gonna need her package that shows these text messages.

THE COURT: So you do not need her here at this point?

ANDREA ARMSTRONG: Now, is she allowed to give me that package that I summonsed? It's my information.

THE COURT: Well, whether or not it would go

